

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #1	CCRB Case #: 201606150	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 07/17/2016 2:06 AM	Location of Incident: West 116th Street and Frederick Douglass Boulevard	Precinct: 28	18 Mo. SOL 1/17/2018	EO SOL 1/17/2018	
Date/Time CV Reported Mon, 07/18/2016 9:07 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/18/2016 9:07 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Bradley Field	30276	932640	028 PCT
2. POM Billy Valerio	02511	932054	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Emre Guven	19460	959679	028 PCT
2. POF Chanel Johns	08526	948054	028 PCT
3. POF Felicia Taveras	18797	960017	028 PCT
4. POM Matthew Meister	12882	952001	028 PCT
5. SGT Thomas Helly	4955	945810	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Bradley Field	Discourtesy: Police Officer Bradley Field spoke discourteously to § 87(2)(b)	
B.POM Bradley Field	Abuse: Police Officer Bradley Field threatened § 87(2)(b) with the use of force.	
C.POM Bradley Field	Discourtesy: Police Officer Bradley Field spoke discourteously to § 87(2)(b)	
D.POM Bradley Field	Abuse: Police Officer Bradley Field threatened to arrest § 87(2)(b)	
E.POM Billy Valerio	Force: Police Officer Billy Valerio used pepper spray against § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

This case was reassigned from Inv. Andrew Bailyn to Inv. Samuel Ross on December 27, 2016.

§ 87(2)(b) filed this complaint via telephone on July 18, 2016. On July 17, 2016, at approximately 2:06 AM, § 87(2)(b) approached Texas Chicken and Burgers, a restaurant located at 2144 Frederick Douglass Boulevard in Manhattan. There, he planned to meet § 87(2)(b) a friend. They had earlier been at a party together. § 87(2)(b) was intoxicated; § 87(2)(b) had not been drinking and was not intoxicated. When § 87(2)(b) arrived at the restaurant, § 87(2)(b) was being placed under arrest. § 87(2)(b) attempted to enter, but PO Matthew Meister of the 28th Precinct, who with his partner PO Emre Guven of the 28th Precinct was effecting § 87(2)(b) arrest, prevented § 87(2)(b) from entering.

Subsequently, additional officers, including Sgt. Thomas Helly, PO Bradley Field, PO Chanel Johns, PO Billy Valerio, and PO Felicia Taveras of the 28th Precinct arrived on scene to back the officers making the arrest and to assist with crowd control outside of the establishment.

When officers escorted § 87(2)(b) out of the restaurant and to an RMP, § 87(2)(b) again attempted to approach to speak with § 87(2)(b). PO Field allegedly said to § 87(2)(b) “Get the fuck back” (**Allegation A**). When § 87(2)(b) responded that he wanted to speak with § 87(2)(b), PO Field allegedly said, “Try me,” indicating to § 87(2)(b) that PO Field was threatening to fight him (**Allegation B**). § 87(2)(b) briefly walked away and then, from a different angle, again approached the RMP in which § 87(2)(b) had been placed. PO Field allegedly said, “Get the fuck out of here before we arrest you” (**Allegations C and D**). § 87(2)(b) turned to walk away across West 116th Street but was impeded by traffic. When a vehicle nearly hit him he stepped backward and, turning around, found himself several feet from PO Valerio. Before § 87(2)(b) could take any further action, PO Valerio sprayed him in the face with pepper spray (**Allegation E**). § 87(2)(b) then departed from the scene. He was not arrested or issued a summons. He did not obtain medical treatment in regards to having been pepper sprayed.

The investigation obtained surveillance video from two businesses: Texas Chicken and Burgers (full video Board Review 01; relevant portion Board Review 02) and from the Food Bank NYC Community Kitchen & Food Pantry, located at 252 West 116th Street in Manhattan (full video Board Review 03; relevant portion Board Review 04). Video from the former establishment captured interactions occurring prior to the above-detailed allegations. Video from the latter establishment captured the aftermath of PO Valerio’s use of pepper spray. The investigation did not obtain any video which captured the allegations.

Civil and Criminal Histories

- On December 2, 2016 the Office of the Comptroller informed Inv. Bailyn that no notice of claim has been filed in regards to this incident.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 05).

- PO Field has been a subject in three previous CCRB cases (Board Review 06). In CCRB Case #200700151 a stop was substantiated against him. § 87(2)(g)
- PO Valerio has been a subject in five previous CCRB cases (Board Review 07). No allegations made against him have been substantiated § 87(2)(g).

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) described the officer who spoke discourteously to him, threatened him with the use of force, and threatened to arrest him, as a heavyset white male standing approximately 5'5" in height, wearing a uniform, and wearing glasses. Among the officers on scene, only PO Guven and PO Field wear glasses, as demonstrated by their service photos (PO Field photo Board Review 08; PO Guven photo Board Review 09). PO Field's service photo reveals that he is a white male, stands, 5'2", weighs 185 pounds, and is of a heavy build. PO Guven, who is also a white male, stands 5'10", weighs 155 pounds, and is of a thin build. No officer on scene other than PO Field matched § 87(2)(b)'s description of the subject officer in question. § 87(2)(g)

Allegation A—Discourtesy: Police Officer Bradley Field spoke discourteously to § 87(2)(b)

Allegation B—Abuse of Authority: Police Officer Bradley Field threatened with the use of force.

Allegation C—Discourtesy: Police Officer Bradley Field spoke discourteously to § 87(2)(b)

Allegation D—Abuse of Authority: Police Officer Bradley Field threatened to arrest § 87(2)(b)

§ 87(2)(b) (Board Review 10) stated that after officers brought § 87(2)(b) his friend, out of the restaurant and then to the front of an RMP, § 87(2)(b) approached to within five feet of the RMP in question. PO Field then said to § 87(2)(b) "Get the fuck back." § 87(2)(b) explained to PO Field that he simply wanted to speak to § 87(2)(b). However, PO Field then said to § 87(2)(b) "Try me." § 87(2)(b) believed that by doing so PO Field was threatening to fight him. § 87(2)(b) briefly walked away from PO Field and then approached the RMP in which § 87(2)(b) had been placed from another angle. Numerous officers walked around the RMP and approached § 87(2)(b). PO Field said to, § 87(2)(b) "Get the fuck out of here before we arrest you."

§ 87(2)(b) (Board Review 11) stated that did not witness much of the interactions between § 87(2)(b) and the officers on scene, as he was focused on his own interactions with the officers. However, § 87(2)(b) stated that an officer or officers said to § 87(2)(b) "Get away" and "Get away from the car." Further, an officer used the word "fuck," but § 87(2)(b) was unable to specify the context in which the officer used the word "fuck." Further, § 87(2)(b) was unable to specify at what point during the incident these interactions took place and he was unable to describe the officer(s) with whom § 87(2)(b) interacted.

PO Field (Board Review 12) stated that he had no independent recollection of the incident in question other than the mental image of a cash register having been knocked to the floor of the restaurant where § 87(2)(b) was arrested. PO Field did not remember any specific bystander from the incident in question. PO Field did not remember if he was tasked with crowd control during the incident. PO Field did not remember instructing anyone outside of the restaurant to back up. PO Field did not remember anyone outside of the restaurant interfering with an arrest.

PO Field was provided with the details of § 87(2)(b) arrest and was shown both the arrest photograph for § 87(2)(b) (Board Review 13) and a photograph of § 87(2)(b) (Board Review 14). However, these did not refresh his recollection of the incident. Additionally, § 87(2)(b) who stands 6'7" tall, was described to PO Field. However, § 87(2)(b)'s physical characteristics also did not refresh PO Field's recollection.

PO Field did not remember if he said to § 87(2)(b) "Get the fuck out of here," "Try me," or, "Get the fuck out of here before we arrest you." PO Field did not remember using any profanity, threatening to arrest anyone, or threatening any individual with the use of force.

During the CCRB interview PO Field was shown the relevant portion of video obtained from Texas Chicken and Burgers (Board Review 02), which demonstrated that when PO Meister and PO Johns escorted § 87(2)(b) from the restaurant, PO Field and § 87(2)(b) followed. However, PO Field stated that the images of the encounter did not refresh his recollection of the incident.

Sgt. Helly (Board Review 15) did not remember if PO Field was on scene. He did not witness PO Field interacting with § 87(2)(b). Sgt. Helly did not know if PO Field said to § 87(2)(b) "Get the fuck out of here," or, "Get the fuck back before we arrest you." He did not know if PO Field said to § 87(2)(b) "Try me." Sgt. Helly did not hear any officer threaten § 87(2)(b) with force or arrest.

PO Johns (Board Review 16), who was partnered with PO Field, stated that when officers were placing § 87(2)(b) into an RMP, § 87(2)(b) approached. Other officers including PO Valerio attempted to halt § 87(2)(b)'s approach, but § 87(2)(b) ignored their commands. PO Johns did not remember if PO Field was among the officers attempting to prevent § 87(2)(b) from approaching the RMP. She did not recall PO Field interacting directly with § 87(2)(b) at any time. PO Johns did not remember if PO Field ordered § 87(2)(b) away from the area. She did not remember PO Field saying to § 87(2)(b) "Get the fuck back," or, "Get the fuck out of here before we arrest you." She did not remember any officer using profanity. She also did not remember hearing PO Field saying to § 87(2)(b) "Try me," or making any such threat of force.

PO Valerio (Board Review 17) stated that he did not witness any officer say to § 87(2)(b) "Get the fuck back," or, "Get the fuck out of here before we arrest you." He did not witness any officer use any profanity toward § 87(2)(b). As addressed below in the analysis of Allegation E, PO Valerio informed § 87(2)(b) that § 87(2)(b) could be arrested and believed that § 87(2)(b) could have been arrested for either Obstructing Governmental Administration or blocking vehicular traffic. However, PO Valerio did not witness any other officer inform § 87(2)(b) that he could be arrested. Lastly, PO Valerio never witnessed any officer attempt to engage § 87(2)(b) in a physical altercation.

PO Taveras (Board Review 18), who was partnered with PO Valerio, did not hear any officer say, “Get the fuck back,” or, “Get the fuck back before we arrest you.” PO Taveras did not hear any officer use profanity or threaten to arrest any individual. She did not hear any officer say, “Try me.” She did not hear any individual say that an officer had threatened them with arrest or the use of force, or that any officer had used profanity.

PO Guven (Board Review 19), who was § 87(2)(b) Arresting Officer, remained inside of the restaurant when PO Meister, PO Johns, and PO Field walked § 87(2)(b) to an RMP, and therefore was not in a position to hear the alleged remarks. He did not recall if any officer used profanity, threatened to arrest § 87(2)(b) or threatened § 87(2)(b) with the use of force.

PO Meister, (Board Review 20), who took the primary role in effecting § 87(2)(b) arrest and who escorted § 87(2)(b) from the restaurant to the RMP, also did not recall any officer saying to § 87(2)(b) “Get the fuck back,” or, “Get the fuck back before we arrest you.” PO Meister did not recall if any officer used profanity toward § 87(2)(b). He did not recall if any officer told § 87(2)(b) that he could or would be arrested. PO Meister did not recall any officer saying to § 87(2)(b) “Try me.” He did not recall any officer warning § 87(2)(b) that force could or would be used against him.

As noted above, the relevant video from the exterior of Texas Chicken and Burgers (Board Review 02) did not capture the allegations in question.

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Allegation E—Force: Police Officer Billy Valerio used pepper spray against § 87(2)(b)

§ 87(2)(b) stated that after his interaction with PO Field, he turned around to cross West 116th Street, but was unable to cross the street due to vehicular traffic. A fast-moving vehicle almost struck § 87(2)(b) causing him to step backward. § 87(2)(b) turned around and found himself several feet from PO Valerio. Before § 87(2)(b) could move or take any further action, PO Valerio removed a canister of pepper spray from his belt and sprayed § 87(2)(b) directly in the eyes. The canister of pepper spray was roughly one foot away from § 87(2)(b)'s face when PO Valerio discharged it, and the spray was discharged for approximately one second. Subsequently, § 87(2)(b) walked away from the scene of § 87(2)(b) arrest. He was not handcuffed, arrested, or issued a summons. § 87(2)(b) walked north on Frederick Douglas Boulevard. He then entered a deli, where a deli employee provided him with water to wash out his eyes. He did not obtain medical treatment in regards to having been pepper sprayed.

As noted above, § 87(2)(b) stated that he did not witness much of § 87(2)(b)'s interactions with officers. When asked if he saw an officer use pepper spray against § 87(2)(b), § 87(2)(b) reiterated that he could not see § 87(2)(b)'s interactions with the officers because he was being placed under arrest and then placed in an RMP. However, § 87(2)(b) heard bystanders yell that § 87(2)(b) had been "maced." Further, the following day § 87(2)(b) saw that § 87(2)(b)'s eyes were "messed up."

PO Valerio stated that when he first saw § 87(2)(b) he was cursing and yelling at a loud volume. PO Valerio then watched as § 87(2)(b) approached Sgt. Helly's RMP and attempted to physically block Sgt. Helly's path. Subsequently, as an officer was placing § 87(2)(b) inside of the RMP, § 87(2)(b) attempted to place his head inside of the RMP to speak with § 87(2)(b). When he did so, Sgt. Helly was made to move aside, and PO Valerio believed that this was the result of § 87(2)(b) pushing Sgt. Helly, but PO Valerio could not see clearly whether this was the case. When § 87(2)(b) did so, Sgt. Helly pushed § 87(2)(b) away from the RMP.

PO Valerio decided to intervene, as § 87(2)(b) was hindering the arrest of § 87(2)(b) and PO Valerio believed that § 87(2)(b)'s behavior posed a potential threat to the safety of the officers effecting § 87(2)(b) arrest. PO Valerio approached § 87(2)(b) who informed PO Valerio that § 87(2)(b) was his friend. In turn, PO Valerio informed § 87(2)(b) that § 87(2)(b) was under arrest and that § 87(2)(b) could not approach him. PO Valerio perceived § 87(2)(b) to be "severely" intoxicated and he could smell alcohol on § 87(2)(b)'s person. The combination of § 87(2)(b)'s behavior and intoxication caused PO Valerio to fear for his own safety as well as the safety of his fellow officers.

At this time PO Valerio ordered § 87(2)(b) to depart from the area or at least cross the street, as § 87(2)(b) was in the center of West 116th Street and was blocking traffic. PO Valerio told § 87(2)(b) that he was blocking traffic. Additionally, PO Valerio told § 87(2)(b) that § 87(2)(b) was creating more problems than solutions. § 87(2)(b) said to PO Valerio, "Go fuck yourself," and, "Put your hands up if you expect me to move, because I ain't moving nowhere." PO Valerio perceived § 87(2)(b)'s comments to constitute a credible threat of violence.

PO Valerio ordered § 87(2)(b) to leave the scene at least three or four times. However, § 87(2)(b) failed to depart and gave no indication that he was willing to comply. § 87(2)(b) continued making verbal threats to PO Valerio and stated clearly that he would not move. § 87(2)(b) again said, "Put up your hands." During this exchange there were other officers nearby but PO Valerio was unfamiliar with them. No other officers spoke with § 87(2)(b) during this exchange.

§ 87(2)(b) then advanced toward PO Valerio. At this point PO Valerio intended to arrest § 87(2)(b) for Obstruction of Government Administration and/or blocking vehicular traffic. When § 87(2)(b) was approximately three feet from him, PO Valerio removed his canister of pepper spray from his duty belt and sprayed § 87(2)(b) in the face. PO Valerio did not provide § 87(2)(b) with any warning before pepper spraying him. PO Valerio discharged the pepper spray for less than one second.

PO Valerio believed that pepper spray was the best choice for the scenario because it was the "least amount of force" necessary would bring an end to § 87(2)(b)'s interference. PO Valerio was especially concerned about initiating a physical altercation with § 87(2)(b) because he believed § 87(2)(b) to be intoxicated.

When PO Valerio used the pepper spray, some of the spray blew back into PO Valerio's face. The blowback temporarily blinded PO Valerio and he was unable to see § 87(2)(b). PO Valerio hoped that other officers who were present would apprehend § 87(2)(b). However, when PO Valerio was able to see again, § 87(2)(b) was gone. PO Valerio did not know what § 87(2)(b) did after the pepper spray was discharged and he did not see where § 87(2)(b) fled. He did not see § 87(2)(b) afterward.

At this time an EMS unit was already on scene. EMTs treated PO Valerio by flushing his eyes with water. Afterward, PO Valerio inquired of the other officers on scene what had happened to § 87(2)(b). PO Valerio was informed that no other officer was aware of § 87(2)(b)'s whereabouts. PO Valerio had not obtained § 87(2)(b)'s name or information before discharging the pepper spray. Subsequently, PO Valerio returned to the 28th Precinct stationhouse, where he finished cleaning the pepper spray off of himself. He then resumed duty.

PO Valerio did not prepare a memo book entry in regards to the incident in question (Board Review 21). However, he prepared a TRI report (Board Review 22), which confirms the discharge of pepper spray and according to which the reasons for the use of the pepper spray were self-defense and the need to overcome resistance or aggression. The report also reveals that Sgt. Helly reviewed the TRI report and determined that PO Valerio's actions were within department guidelines.

According to Sgt. Helly, as officers led § 87(2)(b) from the restaurant to an RMP, § 87(2)(b) attempted to approach § 87(2)(b) and behaved aggressively. Subsequently, Sgt. Helly observed § 87(2)(b) in the street and approaching the RMP in which § 87(2)(b) was seated. When § 87(2)(b) approached the RMP he was yelling, but Sgt. Helly did not remember specifically what § 87(2)(b) said. § 87(2)(b) appeared to be very angry. Sgt. Helly ordered § 87(2)(b) to step back from the RMP containing § 87(2)(b) but § 87(2)(b) continued yelling and did not step back from the RMP. Several officers, including PO Valerio, stepped between Sgt. Helly and § 87(2)(b) ordering § 87(2)(b) to leave the scene. § 87(2)(b) did not depart from the scene. After initially ordering § 87(2)(b) away from the RMP, Sgt. Helly spoke with § 87(2)(b) who was in the RMP. Sgt. Helly did not give any orders to his subordinates in regards of what actions should be taken against § 87(2)(b).

As Sgt. Helly faced the RMP in which § 87(2)(b) had been placed, he heard the sound of spraying from a canister of pepper spray. This sound came from behind Sgt. Helly and he did not see what was taking place at first. Sgt. Helly turned to see PO Valerio covering his own face with his hands. PO Valerio began walking toward another RMP. Meanwhile, § 87(2)(b) ran across the street, away from the scene, heading northbound on Frederick Douglass Boulevard Avenue. PO Valerio then washed his eyes with water. Sgt. Helly later learned that PO Valerio had attempted to use pepper spray against § 87(2)(b) but had missed and the fumes from the spray hit PO Valerio instead. PO Valerio also later informed Sgt. Helly that he had planned to arrest § 87(2)(b) for Disorderly Conduct.

PO Taveras, who, as noted above, was partnered with PO Valerio, stated that when she and PO Valerio arrived on scene they separated from one another. PO Taveras attempted to make the crowd outside of the restaurant disperse. There was no civilian who was particularly

noncompliant or who stood out to PO Taveras. She did not recall seeing or encountering any civilian in the crowd who made her fearful for her safety or the safety of her fellow officers.

PO Taveras did not know what PO Valerio was doing at this time and could not estimate how much time elapsed while she was separated from PO Valerio. PO Taveras did not witness any individual being arrested or handcuffed. She did not witness any officer place § 87(2)(b) into the RMP for transportation to the stationhouse. PO Taveras did not witness any civilian attempt to speak to the arrestee or PO Valerio.

Once the crowd outside of the restaurant began to disperse, PO Taveras returned to PO Valerio and their RMP. PO Valerio was washing his eyes with water. PO Valerio informed PO Taveras that a male had approached PO Valerio too closely, had yelled at PO Valerio, and had refused to leave the scene. PO Valerio told PO Taveras that he had been forced to use pepper spray for his own safety and because the individual was obstructing an arrest. Prior to this conversation PO Taveras was unaware that PO Valerio used pepper spray, and she did not witness PO Valerio use pepper spray against § 87(2)(b).

PO Johns stated that when § 87(2)(b) was placed under arrest inside of the restaurant, § 87(2)(b) was outside of the restaurant. He was upset about the arrest and spoke loudly. PO Johns felt that she needed to place § 87(2)(b) inside of an RMP as quickly as possible because § 87(2)(b) was agitated and because of the presence of a crowd. PO Johns and PO Field then escorted § 87(2)(b) to their RMP.

As the officers placed § 87(2)(b) into the RMP, PO Johns noticed § 87(2)(b) approaching. PO Johns estimated that § 87(2)(b) was roughly eight feet away from them when other officers, including PO Valerio, attempted to halt § 87(2)(b)'s approach. However, § 87(2)(b) ignored their commands. § 87(2)(b)'s refusal to comply with the other officers' orders made PO Johns fear for her safety. The officers' orders for § 87(2)(b) to leave the scene appeared to increasingly infuriate § 87(2)(b). § 87(2)(b)'s tone of voice grew louder and his body language became more aggressive, as he raised his arms while speaking. § 87(2)(b) kept moving forward toward the RMP despite orders from the other officers to leave the scene. PO Johns was unsure how many times § 87(2)(b) was ordered to leave the scene. PO Johns believed that § 87(2)(b)'s repeated failure to comply could have resulted in his arrest. However, PO Johns never learned that any officer intended to arrest § 87(2)(b).

This was the last PO Johns remembered of § 87(2)(b). PO Johns did not see PO Valerio use pepper spray against him. She believed that § 87(2)(b) was still on the scene when she and PO Field departed. Ultimately, PO Johns and PO Field transported § 87(2)(b) to the 28th Precinct stationhouse. At the stationhouse PO Johns saw PO Valerio recovering from having been pepper sprayed. PO Valerio did not explain to PO Johns why he had pepper spray in his eyes or if he himself had used pepper spray.

As noted above in the analysis of Allegations A, B, C, and D, PO Field, who was partnered with PO Johns, stated that he had little independent recollection of the incident. He did not observe any bystander interfering with an arrest. He did not recall anyone matching a physical description of § 87(2)(b). PO Field asserted that he had not seen PO Valerio use pepper spray in the eleven years during which they have worked together. PO Field did not see PO Valerio being treated for

blowback from his use of pepper spray. He did not learn from anyone that PO Valerio had used his pepper spray.

PO Meister stated that as he, PO Guven, and § 87(2)(b) entered the restaurant, before the arrival of the other officers, § 87(2)(b) approached the doorway. § 87(2)(b) had glassy eyes. He behaved aggressively and yelled that the restaurant's employees were wrong. Because of § 87(2)(b)'s glassy eyes and "belligerent" behavior, PO Meister believed that he was intoxicated. The officers asked him multiple times to leave, but § 87(2)(b) did not leave. He yelled, "You can't fucking do this." The officers again told § 87(2)(b) to leave the restaurant but § 87(2)(b) did not comply with the officers' orders. As § 87(2)(b) spoke he gesticulated in front of his face and pointed his index fingers near the officers' faces. § 87(2)(b)'s behavior caused PO Meister to fear for his and PO Guven's safety. PO Meister felt that § 87(2)(b) was interfering with the arrest of § 87(2)(b). As such, PO Meister believed that § 87(2)(b) could have been arrested for Obstructing Governmental Administration or at least summonsed for Disorderly Conduct. However, PO Meister did not plan to arrest § 87(2)(b) as he was primarily concerned with effecting the arrest of § 87(2)(b).

PO Meister did not recall seeing § 87(2)(b) at all after § 87(2)(b) was brought out of the restaurant. He did not know if, after § 87(2)(b) was brought out of the restaurant, § 87(2)(b) committed any further arrestable or summonsable offense. PO Meister did not believe that § 87(2)(b) was arrested or issued a summons. PO Meister did not know of any interaction between PO Valerio and § 87(2)(b). PO Meister did not know if PO Valerio used pepper spray against anyone during the incident.

According to PO Guven, when he and PO Meister brought § 87(2)(b) into the restaurant and attempted to close the door to the establishment, § 87(2)(b) attempted to enter the restaurant and interfered with the officers' attempts to close the door. PO Guven believed § 87(2)(b)'s behavior was impeding the arrest of § 87(2)(b). PO Guven did not recall if § 87(2)(b) appeared to be intoxicated. PO Guven ordered § 87(2)(b) to remain outside of the chicken restaurant but he did not recall how many times he did so. § 87(2)(b) did not comply with the orders. PO Guven did not perceive § 87(2)(b)'s actions to be a threat to the officers' safety or to the public's safety. However, PO Guven believed that in interfering with the officers' ability to close the door, § 87(2)(b) was hindering their ability to keep the scene under control. § 87(2)(b) was being generally noncompliant inside of the restaurant and the presence of § 87(2)(b) made the officers' attempts to control the scene more difficult.

Subsequently, an officer brought § 87(2)(b) from the restaurant to an RMP. PO Guven did not recall if § 87(2)(b) followed § 87(2)(b) and the officers from the restaurant to the RMP. PO Guven did not recall if § 87(2)(b) approached the RMP into which § 87(2)(b) was placed or if § 87(2)(b) interfered with § 87(2)(b) being placed inside of an RMP. PO Guven did not observe § 87(2)(b) commit any offense for which he could have been arrested. PO Guven did not see PO Valerio use pepper spray and he did not learn that PO Valerio or any officer used pepper spray.

As noted above in the Case Summary, the investigation obtained surveillance video from Texas Chicken and Burgers (full video Board Review 01; relevant portion Board Review 02):



201606150_20160824_1553_DM.mp4

Video from Texas Chicken and Burgers (1 minute 21 seconds)

The investigation also obtained video from and the Food Bank NYC Community Kitchen & Food Pantry, located at 252 West 116th Street in Manhattan (full video Board Review 03; relevant portion Board Review 04):



201606150_20160920_1244_DM.mp4

Video from Food Bank NYC Community Kitchen & Food Pantry (3 minutes 47 seconds)

Also as noted above, neither video captured the key interaction between § 87(2)(b) and PO Valerio. § 87(2)(g) Video from the former establishment confirms that § 87(2)(b) attempted to follow PO Meister, PO Guven, and § 87(2)(b) into the restaurant; that PO Meister repeatedly made gestures § 87(2)(g) that he ordered § 87(2)(b) away from the restaurant; and that when the officers entered the restaurant, § 87(2)(b) did not depart but rather pulled the door open again. Finally, the video confirms that when PO Johns and PO Meister escorted § 87(2)(b) out of the restaurant, § 87(2)(b) initiated physical contact with § 87(2)(b) and then followed them in the direction of the RMP. Video from the latter establishment captured the aftermath of PO Valerio's use of pepper spray and shows an individual pouring water over PO Valerio's eyes.

According to *NYPD Patrol Guide Procedure 221-01* (Board Review 23), an officer may use force may when it is reasonable to ensure the safety of a member of the service. Further, the degree of force employed must be reasonable given the circumstances. According to *NYPD Patrol Guide Procedure 221-07* (Board Review 24), an officer may use pepper spray when it is reasonably necessary to gain or maintain control of a person who is exhibiting active physical aggression.

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§ 87(2)(g)
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§ 87(2)(g) [Redacted]
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§ 87(2)(g), § 87(4-b) [Redacted]
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Squad: 1

Investigator:	_____	_____	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date